

EX-107-400-101-100

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May 9, 1996

By Hand

Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

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MAY - 9 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Ex Parte Presentation  
CC Docket No. 92-297

Dear Chairman and Commissioners:

The Commission's rulemaking proceeding to adopt rules for the nationwide licensing of the Local Multipoint Distribution Service ("LMDS") in the 28 GHz band has now entered its fourth year without resolution. The rulemaking proceeding has included separate Notices of Proposed Rulemaking adopted in December 1992, January 1994 and July 1995, as well as a Negotiated Rulemaking held in July-September 1994. The signatories to this letter ("Joint Parties") support the Commission's desire to accommodate the maximum number of competing services in the largely fallow, yet enormously valuable, 28 GHz spectrum, including LMDS, Fixed Satellite Service ("FSS") and Mobile Satellite Service ("MSS"). Throughout this protracted four-year period, the Commission staff has labored with the LMDS, FSS and MSS industries to develop acceptable regulations to maximize the use of the band by these various services. Unfortunately, an impasse remains largely due to the failure to reach agreement on LMDS/MSS sharing rules for only 150 MHz of the 2.5 GHz of spectrum addressed in this proceeding.

While the Joint Parties continue to support the adoption of "Option 4 Prime" provided there are flexible sharing rules permitting two-way services throughout the LMDS allocation, the LMDS industry cannot withstand further regulatory delays in the resolution of this proceeding. As a result, if the Commission does not promptly adopt Option 4 Prime as described above, the Joint Parties propose that the Commission adopt the band plan proposed by a unanimous Commission vote in the Third NPRM, with, however, intra-service LMDS, FSS and MSS auctions of the 150 MHz from 29.1-29.25 GHz. In this manner, marketplace forces will determine the most efficient use of this

Very truly yours, *Of Z*

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contested spectrum; moreover, we are confident that 1 GHz will be available for LMDS, throughout the country, as contemplated in the Third NPRM.

Prior to the Commission's adoption of a proposed 28 GHz band segmentation plan in the Third NPRM in July 1995, the Commission staff spent several months meeting with the affected industries to understand their service-specific spectrum needs. Once again, during the past several months, the Commission staff has conducted countless meetings with the affected industries to discuss several new options for segmenting the 28 GHz band in a manner intended to best accommodate the needs of the various services proposing to use this spectrum. Through these exhaustive meetings, it has become evident that the claimed spectrum needs of each proposed 28 GHz service cannot be fully satisfied under any of the band plan options presented by the staff. Accordingly, each party must be willing to make certain compromises. In this regard, the LMDS community has reluctantly acquiesced to the Commission's determination to retreat substantially from the two-1 GHz license LMDS allocation proposed in the First NPRM, and instead to provide LMDS an 850 MHz primary allocation from 27.5-28.35 GHz, together with 135 to 150 MHz of spectrum in the lower part of the 29 GHz band, with service rules permitting two-way use.

Based on the voluminous record in this proceeding, there is compelling evidence that with a sufficient, largely contiguous 1 GHz allocation for LMDS in the 28 GHz band, LMDS immediately will bring significant new competition to the U.S. communications marketplace by providing consumers with an array of video, telephony, data and interactive services. In addition, auctions of 28 GHz spectrum for the nationwide licensing of LMDS promise to generate substantial federal deficit-reducing revenues.

However, given the current impasse in resolving the band plan deliberations, which had focused largely on the 150 MHz from 29.1-29.25 GHz designated in the Third NPRM for LMDS/MSS sharing, and led to the consideration of an array of alternative 28 GHz band segmentation plans, the promising LMDS technology continues to be mired in regulatory delay. This is particularly troublesome in view of the fact that LMDS is a U.S.-developed technology, and many foreign countries, who had been waiting to follow the Commission's lead in allocating 28 GHz spectrum for LMDS, have forged ahead on their own due to the continued unwarranted delay in the resolution of this proceeding in the U.S. In this regard, on February 29, 1996, Industry Canada released a decision designating a total of 3 GHz, from 25.35-28.35 GHz, for the LMDS-like Local Multipoint Communication Systems, with immediate nationwide licensing of the 1 GHz from 27.35-28.35 GHz.

While the Joint Parties continue to support the adoption of Option 4 Prime as described above, in view of the failure of FSS and MSS proponents to agree on an acceptable means for sharing under any of the 28 GHz band plans under consideration,

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and the resulting mutually exclusive proposed uses of that spectrum, the Joint Parties propose that the Commission immediately conclude this proceeding by adopting the band plan it proposed by a unanimous Commission vote in the Third NPRM, subject to a modification that the 29.1-29.25 GHz spectrum shall be licensed by intra-service spectrum auctions, with no restrictions on two-way use of this spectrum. The auction of this 150 MHz of spectrum, which has been at the center of the impasse, should be open to all parties, including LMDS, MSS and FSS proponents, and be based on Basic Trading Areas.

Moreover, to ensure the most robust and flexible use of this spectrum, the successful bidder should be permitted to use the spectrum for either LMDS, FSS or MSS services, or any combination thereof, based on private sharing agreements that will be driven by marketplace and technical realities rather than worst-case theoretical predictions of interference. Such private sharing agreements also are more likely to accommodate technological developments that facilitate spectrum sharing that the Commission should not be expected to predict. Thus, through this process, the most efficient methods for the use and sharing of this spectrum will be determined by marketplace forces, and the Commission will not be forced to impose regulations that may not be acceptable to all affected parties.

The prompt conclusion of this protracted proceeding in this manner will advance numerous public interest benefits, including:

- The immediate deployment of LMDS – a proven, innovative multi-purpose communications service that will bring new competitive video, voice, data and two-way services to consumers throughout the U.S.
- The opportunity for small businesses to own and benefit from LMDS systems, a fact repeatedly endorsed in the record in this proceeding by the Clinton Administration's Small Business Administration.
- The opportunity for LMDS to be used by educational institutions, who like the University of Texas, have vigorously supported the prompt licensing of LMDS based on its distance learning and medical diagnostic purposes.
- The receipt by the U.S. Treasury in 1996 of billions of dollars of revenue from the auctions of LMDS licenses nationwide.

Ultimately, the Joint Parties believe that the prompt resolution of this proceeding either by the adoption of Option 4 Prime as described above or by the adoption of the proposal set forth herein, will facilitate the provision of the numerous benefits of both LMDS and satellite services to U.S. consumers as soon as possible. However, if the


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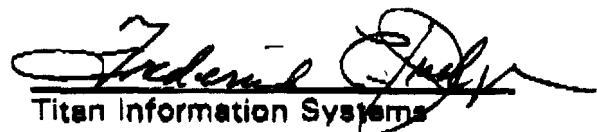
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Commission determines not to embrace this approach of intra-service auctioning of the contested 150 MHz from 29.1-29.25 GHz, we would urge the Commission's adoption of a plan for intra-service auctions for the entire 28 GHz band.<sup>1</sup> This would allow all services seeking 28 GHz spectrum equitable and prompt access to the band, subject to the fundamental public policy principle reflected in the Telecommunications Act of 1996 that the marketplace should determine how the spectrum is best utilized.

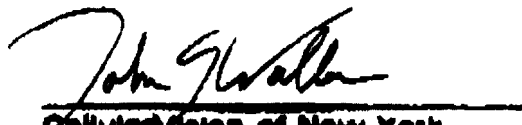
Respectfully submitted,



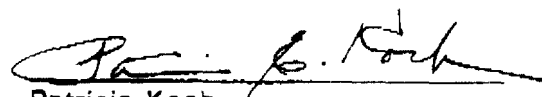
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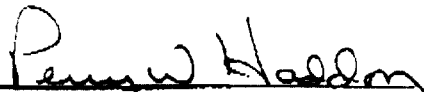



M/A COM, Inc.  
James A. Bowen  
Vice President & General Manager


<sup>1</sup> In this regard, during the Negotiated Rulemaking a number of members of the Negotiated Rulemaking Committee signed a document supporting such auctions of the 28 GHz band. See NRM/91<sup>1</sup>, September 23, 1994, CC Docket No. 92-297.

<sup>2</sup> The signatories' support for this approach is conditional on the Commission's grandfathering of CellularVision of New York, L.P.'s commercial LMDS license as proposed in the Third NPRM in CC Docket No. 92-297.

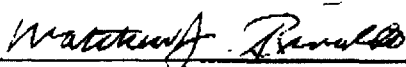
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